HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.1353 of 2006

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Between:

M/s. Saparna Infotech Ltd., represented by
Its Managing Director, Hyderabad.

And

Employees Provident Fund Organisation,
Andhra Pradesh, Hyderabad represented by its
Regional Provident Fund Commissioner
and others

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Respondents.

:: J U D G M E N T ::

Counsel for the appellant : Sri V.Hari Haran

Counsel for **respondents** 1 and 2 : Sri R.N.Reddy

28th December, 2006

Per G.S. SINGHVI, C.J.

This appeal is directed against order dated 25-8-2006 passed by

the learned Single Judge, whereby he dismissed the writ petition filed by the appellant for quashing order dated 25-4-2006 passed by Assistant Provident Fund – Authority under Section 7A(4) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'respondent No. 2').

The appellant is covered under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act'). It has been assigned code No. AP/37794. On account of its failure to remit the contributions of provident fund, administrative charges etcetera, respondent No. 2 issued notice dated 20-12-2002 to the appellant under Section 7A of the Act. On the date of hearing i.e., 21-09-2003, Sri Kama Raju, Manager (Administration) appeared on behalf of the appellant and sought time for production of the records. His request was accepted and the case was adjourned to 25-2-2003. However, on the next day, no one appeared on behalf of the appellant. Notwithstanding this, respondent No.2 adjourned the enquiry from time to time i.e. 15-4-2003, 27-5-2003, 10-6-2003, 9-7-2003, 5-8-2003 and lastly 26-8-2003. On none of these dates, the representative of the appellant appeared. Therefore, after examining the available record, respondent No. 2 passed order dated 16-9-2003, whereby he determined the appellant's liability towards E.P.F contribution and administrative charges to the tune of Rs.4,12,924/- and called upon it to pay the amount within ten days along with simple interest at the rate of 12% per annum. Paragraphs 1 to 4 of order dated 16-09-2003 read as under:

> "M/s. SAPARNA INFOTECH LIMITED, is an establishment covered under the provisions of the EPF & MP Act, 1952 under codeNo.AP/37794. The employer of the above establishment failed to comply with the provisions of the Act and the Scheme framed there under in as much as the contributions and administrative charges etc., have not been remitted for the

period from 06/2000 to 11/2002 in respect of workers. In view of the above inquiry under section 7A of the EPF & MP Act, 1952 for determination of the dues was considered necessary and the same was posted to 29.01.2003 after due intimation to the employer vide summons Notice No.AP/37794/ZONE – X/3474, DATED 20.12.2002.

On 21-09-2003, Sri N. Kama Raju Manager (Adm) of the establishment appeared with written request from Mr. B.V.Raju, Director of the establishment seeking time to produce hence the inquiry is posted to 25.02.2003. on 25.02.2003, 15.04.2003, 17.05.2003, 10.06.2003, 09.07.2003, none appeared and the inquiry is adjourned to 05.08.2003. On 05.08.2003, none appeared on behalf of the establishment. Therefore, ex-parte proceedings is issued as per the available records. The following amounts are found due under the heads of account for the period from 06/2000 to 11/2002 totaling to Rs.4,12,932/- which is to be paid by the employer.

Sl.No.	Head of the Account	7A Due Amount	7Q	Total
1.	EPF Contributions Ac.No.1	Rs.2,05,650/-	Rs.47,020/-	Rs.2,52,670/-
2.	EPS Contributions Ac.No.10	Rs.1,09,320/-	Rs.24,995/-	Rs.1,34,315/-
3.	EPF Adm. Charges Ac.No.2	Rs. 14,430/-	Rs. 3,299/-	Rs. 17,729/-
4.	EDLI Contributions Ac.No.21	Rs. 6,570/-	Rs. 1,503/-	Rs. 8,073/-
5.	EdLI Ins/Adm. Charges A/c. No.22	Rs. 120/-	Rs. 25/-	Rs. 145/-
	Total	Rs.3,36,090/-	Rs.76,842/-	Rs.4,12,932/-

Now therefore in exercise of the powers conferred under section 7 A of the EPF & MP Act, 1952, I M.S.K.V.SATYANARAYANA, Assistant P.F.Commissioner (Compliance) Sub-Accounts Office, Kukatpally, Hyderbad, Andhra Pradesh, do hereby determine a sum of Rs.4,12,924/- (Rupees Four Lakhs Twelve Thousand Nine Hundred and

Twenty Four Only) from the employer for the period from 06/2000 to 11/2002 in respect of employees., I hereby direct the employer of the said establishment to pay the said amount duly reducing the amounts already paid if any within 10 days of the receipt of this order. The employer shall also calculate simple interest @ 12% on the dues up to the date of actual remittance and pay the same.

The permission of 10 days for the payment of dues is mentioned above will not absolve the employer of his liability to pay damages contemplated under section 14B of the Act and the other action as provided under section 14 and 8 of the EPF & MP ACT, 1952 that may be taken against the establishment where the payments are not made within the due date."

The aforementioned order was sent to the appellant at its address available in the records of the office of respondent No. 2, but the amount due was not paid. Thereupon, respondent No. 2 issued notice dated

1-4-2004 requiring the appellant to pay the amount determined vide order dated 16-09-2003. In its reply dated 4-8-2004, the appellant made a request to respondent No. 2 to withdraw the proceedings initiated for recovery of the dues of provident fund etcetera, by contending that the company was incurring losses for the last three years and no employee is working in the company. For the sake of convenient reference, letter dated 4-8-2004 is reproduced below:

"With reference to the above we have already informed your department no body is working in our company for the last 3 years as per PF Act and our company is incurring losses for the 3 years. Your officials also during inspection observed that no employee of M/s. Saparna Infotech Ltd., is working in the premises. We have informed several times to you that our employees who were originally employed left the organization about 3 years back and requested you to kindly withdraw the provisions against our company for the recovery of dues.

Hence kindly withdraw the proceedings against our

company for the recovery of dues."

After one year and four months, the appellant sent letter dated 13-1-2006 to respondent No. 2 informing the latter that it intends to approach the High Court for availing legal remedy. However, instead of adopting that course, the appellant filed an application on 5-4-2006 under Section 7A (4) of the Act for setting aside the order of determination passed by respondent No.2. It also applied for condonation of two years delay by claiming that the business of dotcom was suspended due to recession in the business. Three paragraphs application filed by the appellant for condonation of delay is reproduced below:

> "We have filed the petition u/s. 7-A (4) for re-open the 7-A order, for the period 6/2000 to 11/2002, which was assessed and determined the dues on ex-parte basis by your authority.
>
> Our organization main business operations of the "Dot.Com" business was suspended due to recession takes place in this business during that period.
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> Therefore prayed the Hon'ble authority to condone the delay infilling the re-open petition as against the 7-A ex-parte order."

Immediately after filing of application under Section 7A (4), the appellant preferred Writ Petition No. 8688 of 2006 for quashing notice dated 3-4-2006 issued by Recovery Officer, SAO, Kukatpally, Hyderabad for execution of the order passed under Section 7A of the Act by arrest and imprisonment of its Director. The same was disposed of by the learned Single Judge with a direction to respondent No. 2 to decide the application filed by the appellant under Section 7A (4) of the Act within a period of four weeks.

In compliance of the direction given by the Court, respondent No. 2 passed order dated 25-04-2006, whereby he dismissed the application of the appellant on the ground that the same had been filed after two years and six months of the passing of order under Section

7A of the Act.

The appellant could have challenged order dated 25-4-2006 by filing an appeal under Section 7-I of the Act, but instead of availing the statutory remedy available under the same very Act under which the order burdening it with liability to deposit the amount of provident fund etcetera, was passed, the appellant chose to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. The learned Single Judge dismissed the writ petition by observing that order dated 25-4-2006 does not suffer from any jurisdictional infirmity or error of law, which could justify interference under Article 226 of the Constitution. The learned Single Judge noted that enquiry initiated under Section 7A had been adjourned on various dates, but the appellant did not bother to attend the enquiry and held that respondent No. 2 did not commit any illegality by refusing to set aside order dated 16-09-2003.

Sri V.Hari Haran, learned counsel for the appellant argued that orders dated 16-9-2003 and 25-4-2006 passed by respondent No. 2 should be declared nullity, because the same were passed without affording reasonable opportunity of hearing to his client. He emphasised that even though Sri N. Kama Raju, Manager (Administration) of the appellant appeared before respondent No. 2 on 29-1-2003 and sought time for producing the records, the latter arbitrarily proceeded ex parte and determined the liability of the appellant under Section 7A. He then argued that even though there may be some justification for passing order dated 16-09-2003, respondent No. 2 was not at all justified in dismissing the application filed under Section 7A (4) without giving notice to the appellant about the date of hearing and without taking into consideration the fact that order dated 16-9-2003 had not been served on the appellant.

Sri R.N. Reddy, learned Standing Counsel for Provident Fund Organisation supported the order under challenge and argued that the learned Single Judge did not commit any error by declining interference with order dated 25-04-2006. Sri Reddy emphasised that the appellant had exhibited highly recalcitrant attitude towards the proceedings initiated by respondent No. 2 under Section 7A of the Act inasmuch as its representative did not bother to appear and produce the record despite the fact that the enquiry was adjourned at least on seven dates after
29-1-2003. Learned counsel then argued that the appellant's failure to deposit the amount of provident fund dues and administrative charges for the period from June, 2000 to November, 2002 constituted a valid ground for passing order under Section 7A. He also defended the dismissal of application filed under Section 7A (4) and argued that the bald assertion made on behalf of the appellant that order dated 16-9-2003 had not been communicated to it was not supported by affidavit.

We have given serious thought to the respective arguments. In our opinion, the order under challenge does not suffer from any error, which could justify exercise of the power by the Division Bench under Clause 15 of the Letters Patent. The attitude of non-cooperation exhibited by the applicant is evinced from the fact that even though respondent No. 2 had served notice under Section 7A and adjourned the proceedings on at least seven dates, no one appeared on its behalf except the first date of hearing, on which date, Sri N. Kama Raju, Manager (Administration) sought adjournment for production of records. If the appellant was genuinely interested in participating in the proceedings initiated by respondent No. 2 under Section 7A of the Act, nothing prevented it from producing the relevant records to convince the competent authority regarding its liability or otherwise to

deposit the amount of provident fund etcetera. The appellant's plea that order dated 16-9-2003 was not served on it also sans credibility, because along with application filed under Section 7A(4), no affidavit was filed. More over, a bare reading of communication dated 4-8-2004 sent by the appellant shows that it was very much aware of the determination made by respondent No. 2 under Section 7A of the Act and the consequential action taken for execution of that order. Thus, there was no justification whatsoever for filing application under Section 7A(4) after more than two years and six months. Rather, this long delay strengthens the inference that the appellant was never interested in cooperating with the authorities concerned. Therefore, the learned Single Judge rightly declined to interfere with order dated 25-4-2006 and we do not see any reason to take different view.

No other point has been urged.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.2865 of 2006 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, C.J.

28th December, 2006

C.V.NAGARJUNA REDDY, J.

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